



# **South Dakota Long Term Care Ombudsman Program Report for 2022**

**October 1, 2021 – September 30, 2022**

The information within this report demonstrates efforts in protecting and advocating for the rights of individuals residing in long term care communities throughout South Dakota. Points of view, opinions or positions of the Ombudsman represent the opinions, views, positions, policy, etc. of the Long Term Care Ombudsman Program (45 CFR 1324.11(e)(8)).

# Message from the State Long Term Care Ombudsman

In accordance with federal regulations, I am pleased to present the South Dakota Long Term Care Ombudsman Program report for federal fiscal year (FFY) 2022.

Long Term Care Ombudsman (LTCO) work to resolve concerns related to the health, safety, welfare, and rights of individuals residing in long term care facilities. The South Dakota State Long Term Care Ombudsman Program (LTCOP) provides services to board and care homes (assisted living centers, 60+ transitional care units, community living homes, registered residential centers), nursing homes (skilled and non-skilled), and long term geriatric psychiatric care centers.

The South Dakota LTCOP consists of six certified, designated, dedicated, and passionate Regional Ombudsman who support and promote a person-centered approach to advocacy. It is our belief that person-centered care leads to better outcomes for residents and contributes to higher staff engagement and retention. The LTCOP helps residents, family members, and others understand residents' rights and support residents in exercising their rights. LTCO work to preserve the dignity, health, rights, safety, and welfare of this vulnerable and valued population of South Dakotans.

Donna Fischer, Certified Dementia Practitioner

State Long Term Care Ombudsman



**Ombudsman –  
is a Swedish word**

**Ombudsman –  
(Om – budz – man)**

**Ombudsman –  
means advocate or  
representative of  
the people. “One  
who speaks on  
behalf of another.”**

**State Long Term  
Care**

**Ombudsman  
Program**

**3800 E Hwy 34**

**Pierre, SD 57501-  
5070**

# Contents

Ombudsman Code of Ethics as Developed.....	2
Quick Facts .....	3
Authority, Purpose, and Philosophy.....	4
Activities and Complaint Investigation.....	5
Training.....	6
Responsibilities .....	6
Collaboration .....	7
Advocacy in Action .....	8
Complaint Category Definitions....	110
Top Five Complaints.....	12
When Should I Contact the Long Term Care Ombudsman Program?.....	13
Barriers, Efforts, and Recommendations .....	14
Long Term Care Ombudsman Program Team.....	16

## **Ombudsman Code of Ethics as Developed by**

### **The National Association of State Long Term Care Ombudsman**

- ❖ The ombudsman provides services with respect for human dignity and the individuality of the resident, unrestricted by considerations of age, social or economic status, personal characteristics, or lifestyle choices.
- ❖ The ombudsman respects and promotes the resident's right to self-determination.
- ❖ The ombudsman makes every reasonable effort to ascertain and act in accordance with the resident's wishes.
- ❖ The ombudsman acts to protect vulnerable residents from abuse and neglect.
- ❖ The ombudsman safeguards the resident's right to privacy by protecting confidential information.
- ❖ The ombudsman remains knowledgeable in areas relevant to the long term care system, especially regulatory, legislative information, and long term care service options.
- ❖ The ombudsman acts in accordance with the standards and practices of the Long Term Care Ombudsman Program and with respect for the policies of the sponsoring organization.
- ❖ The ombudsman will provide professional advocacy services unrestricted by personal beliefs or opinions.
- ❖ The ombudsman participates in efforts to promote a quality, long term care system.
- ❖ The ombudsman participates in efforts to maintain and promote the integrity of the Long Term Care Ombudsman Program.
- ❖ The ombudsman supports a strict conflict of interest standard that prohibits any financial interest in the delivery or provision of nursing home, board and care services, or other long term care services that are within their scope of involvement.
- ❖ The ombudsman shall conduct the role in a manner that will strengthen the statewide and national ombudsman network<sup>1</sup>

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<sup>1</sup>[Code of Ethics | NASOP nasop.org/about/code-of-ethics/](https://www.nasop.org/about/code-of-ethics/)

## Quick Facts FFY 2022

- **591 Complaints**
- **271 Complaint related visits**
- **1477 Routine visits to facilities were completed**
- **405 Incidents of information and assistance to individuals were provided**
- **544 Incidents of information and assistance/consultation to facility staff were provided**
- **57 Resident council meetings attended**
- **70 Facility surveys were participated in**
- **16 Training sessions provided to facility staff**



## Authority, Purpose, and Philosophy

### Authority

The LTCOP is authorized under the [Older Americans Act](#), 45 Code of Federal Regulations 1324, and South Dakota Administrative Rule 44:33. The LTCOP is organizationally located within the Department of Human Services (DHS) Division of Long Term Services and Supports.

### Purpose

The purpose of the LTCOP is to resolve concerns related to the health, safety, welfare, and rights of people living in long term care facilities. Improve the quality of care and quality of life for residents of long term care facilities through individual and systemic advocacy. Provide regular, timely, and private access to the services of the LTCOP.

The Older Americans Act directs the LTCOP to receive, investigate and resolve complaints made by, or on behalf of, individuals who are residents of long term care facilities. The primary focus of the LTCOP is the resident; therefore, the LTCO advocates on behalf of, with, and at the direction of the resident. Complaints may relate to the actions, inactions, or decisions of providers or their representatives, public or private agencies, guardians or others that may adversely affect or be perceived by the resident to adversely affect the health, safety, welfare, or rights of residents. The LTCO is available to any resident of a long term care facility in the state of South Dakota.

The Older Americans Act requires the LTCOP to represent the interests of residents before governmental agencies. Work to facilitate public comment on laws, regulations, policies, and actions. Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, policies, and actions that relate to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long term care facilities and services in the State.

### Philosophy

The LTCOP is a person-centered advocacy program, which is centered on the resident. The LTCO advocates, mediates, investigates, and educates residents as well as others and has a responsibility to act in situations involving vulnerable individuals. The LTCO advocates by providing information, assisting in problem solving, and by promoting individual and group self-advocacy skills.

## Activities and Complaint Investigation

### Activities

The following activities are provided by the LTCOP and work in tandem to ensure a presence in facilities and continued advocacy for the rights and interests of residents. LTCOP activities consist of:

- ❖ Routine Visitation – LTCO make unannounced, routine visitation to individuals residing in long term care. This routine contact helps develop a working relationship of trust where individuals share their concerns and request assistance where needed.
- ❖ Complaint Visitation – LTCO make unannounced visits to address complaints received by or on behalf of residents.
- ❖ Information and Assistance/Consultation – LTCO provide information to residents, individuals, and facility staff about issues impacting residents (residents' rights, care issues, services, etc.) and/or sharing information about accessing services. This service may be provided through various means, including but not limited to email, phone, or in person.
- ❖ Resident/Family Councils – LTCO provide assistance to develop, continue, and/or enhance resident and/or family councils. A resident council provides a space where residents can discuss issues, receive peer support, and work on issues. A family council provides a space where family members of residents in long term care can come together to discuss issues, provide support to each other and facility staff, and work on systemic concerns.
- ❖ Community Outreach and Education – LTCO attend events to share information regarding the LTCOP, long term care options, residents' rights, and elder abuse. Events include but are not limited to health fairs, community fairs, association conferences, club/group meetings, facility events, etc.
- ❖ Survey Participation – LTCO participate in survey activities conducted by the South Dakota Department of Health Office of Licensure and Certification, the regulatory agency for long term care and board and care homes.
- ❖ Training for facility staff – LTCO provide training to facility staff including but not limited to residents' rights and elder abuse.

## **Complaint Investigation**

LTCO investigate complaints received by or on behalf of a resident in long term care. Regardless of who reports the complaint, the resident is the individual guiding the level of investigation, follow up, and resolution. The LTCO works to first educate and empower the resident by explaining residents' rights and options. If the resident provides permission for the LTCO to investigate the concern, a plan of action is developed with the resident. During the investigation, the resident is consulted if further direction is needed. After the investigation, the resident determines if the resolution is acceptable and if the issue is resolved.

## **Training**

The Administration for Community Living (ACL) established standards applicable to the training required for representatives of the "Office of Ombudsman" in November 2019. The standards specify content and minimum hours of training. The minimum requirement to certify a LTCO is 35 hours of initial certification training. Maintaining designation requires annual in-service training of at least 18 hours. Content coverage as well as a percentage of various study platforms are designated in the requirements.

Initial and on-going training is vital to strengthen professional skills along with maintaining and enhancing the programs integrity.

## **Responsibilities**

The State and Regional LTCO provide services to protect the health, safety, welfare, and rights of residents living in long term care facilities.

In accordance with the policies and procedures of the LTCOP, the LTCO shall:

- ❖ Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents
- ❖ Provide services to protect the health, safety, welfare, and rights of residents
- ❖ Ensure that the residents have regular and timely access to services provided through the LTCOP and that residents and complaints receive timely responses to requests for information and complaints
- ❖ Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents



- ❖ Review and comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents
- ❖ Facilitate the ability of the public to comment on the laws, regulations, policies, and actions
- ❖ Promote and provide technical support for the development and ongoing support as requested by resident and family councils
- ❖ Carry out other activities the State LTCO determines to be appropriate
- ❖ Help residents with self-advocacy

## Collaboration

The South Dakota State Long Term Care Ombudsman (SLTCO) participates in the Medicaid Fraud Control Unit's quarterly liaison meetings, advocating for the rights of residents. The Attorney General's Medicaid Fraud Control Unit (MFCU) detects, investigates, and prosecutes fraud and abuse by providers of medical services to recipients of Medicaid. The formal mechanism to exchange case data, information, and reports between the Department of Health, Department of Social Services, Department of Human Services, and Medicaid Fraud Control Unit is held in the Memorandum of Understanding between the agencies. The purpose of this memorandum is to discuss and refer potential cases between interested agencies, address concerns and problems between agencies. The Ombudsman Program is prohibited from disclosing the identity of a complainant or resident unless the program has written or oral consent from the resident, which is documented by the ombudsman, written consent from the resident's legal representative, or a court order requiring disclosure. [Title 42 Code of Federal Regulations part §1321.51](#), states that no information can be disclosed without informed consent, unless disclosure is required by court order or for program monitoring by authorized agencies.

The SLTCO participates in various groups to assist in carrying out the mission of the Ombudsman Program, which include:

- ❖ South Dakota Dementia Coalition
- ❖ The National Association of State Long Term Care Ombudsman Programs
  - Serving as secretary
- ❖ National Council of Certified Dementia Practitioners
- ❖ Community of Practice
- ❖ National Consumer Voice
- ❖ Uniting Nursing Homes in Tribal Excellence (UNITE) collaborative
  - Honorary Member

## Advocacy in Action

### Case Story #1:

LTCO received a call from administrative staff at a nursing home. There were two residents, in their late 70's, who had met in the nursing home and become a couple (each of the residents were cognitively intact and had no family involvement). The couple talked about wanting to room together. Staff were unsure if this was possible and were worried about the potential social implications for the couple, from other residents, since they were not married. Discussion ensued around the rights of the residents to room together if they both desired to do so. Brainstorming commenced with ideas in how to make all residents accepting of this potential arrangement. With the ideas thought of during the information and assistance call with the LTCO, the facility staff talked with the couple to see what they would like to do. LTCO visited with the residents. The couple decided they wanted to get 'married.' Not legally married but married in the eyes of all the residents. Facility staff helped the couple plan their facility wedding. The couple, facility staff, and other residents were very excited. Everyone in the facility got really involved in helping, staff made decorations, took the couple to get clothes, kitchen staff made a wedding cake, they made flowers, took photos, and performed the service. A reception and dance followed the service where all residents could participate and join in the celebration. Couple reported they were very happy with all the assistance from the LTCO and facility staff.

### Case Story #2:

LTCO was contacted by \*Amber, the daughter of \*Donna, who is a resident in a nursing home. Donna's dentures had gone missing. Amber felt the facility staff was not being attentive to the issue of the dentures being lost. Amber had been on the phone all day talking with facility staff, Medicaid, and other entities prior to calling the LTCOP. Following the call of concern with Amber, the LTCO reached out to Donna who indicated a staff member picked up the dentures from when they "fell on the floor and the staff member put them in a cup" elsewhere in the facility. Donna wished for the LTCO to assist her in resolving the complaint. There were discrepancies on what Donna and the facility staff felt happened to the dentures. Many entities were involved including but not limited to the facility and their legal representation, Medicaid, LTCO, and DHS. Ultimately, the dentures were replaced by the facility and Donna was happy with the assistance provided by the LTCOP and the resolution to the resident.

### Case Story #3:

LTCO was contacted by \*Christina, the sister of \*Maria, who had recently been a resident in an assisted living home. Christina stated she was concerned regarding how Maria's stimulus checks, and social security funds were spent and tracked by the assisted living who was acting as the representative payee. They were also concerned regarding a cleaning fee that was assessed by the assisted living after Maria moved out. Maria was a resident of the assisted living home for several years and recently had moved closer to family. Maria nor Christina had received information regarding the resident trust account and had not received a check for the balance of the account since leaving the assisted living. Christina reports the assisted living staff requested family to bring/send items that the residents was in need of as Maria did not have funds to purchase it. LTCO reached out to Maria to get permission to look into the concerns and also received permission to talk to Christina, Adult Protective Services, Department of Health, and other entities who may be able to assist in resolving the concern. Maria should have received \$60 per month of her personal needs allowance and received all the stimulus checks. During the course of the investigation, several agencies were involved and collaborating such as Disability Rights South Dakota, Department of Health Licensure and Certification, Medicaid Fraud Control Unit, etc. It was determined there was an amount remaining in the resident trust account, which was refunded to Maria. Maria and Christina expressed thanks to the LTCOP for the diligent help provided to clear up this concern.

\*Names have been changed to protect the confidentiality of the individuals.

## Complaint Category Definitions as Determined by Administration for Community Living

The following terms as defined by the Administration for Community Living (ACL) specifically as they relate to Ombudsman reporting.

**Complaint** – An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman program which requires Ombudsman program investigation and resolution on behalf of one or more residents of a long term care facility.

**Abuse, Gross Neglect and Exploitation (Code A)** – Serious complaints of willful mistreatment of residents by facility staff, resident representative/family/friend, other residents or an outside individual. Types of abuse include physical abuse, sexual abuse, psychological abuse, financial exploitation, and gross neglect.

**Access to Information (Code B)** – Complaints against the facility regarding access to information made by or on behalf of the residents. Use for willful interference with Ombudsman duties. Types of access include access to information and records, language and communication barriers and willful interference.

**Admission, Transfer, Discharge, Eviction (Code C)** – Complaints against the facility involving admission, appeal process, discharge/eviction, and room issues.

**Autonomy, Choice, Rights (Code D)** – Complaints against the facility staff failure to honor and promote a resident's right or preferences. Including choice in health care, living in the least restrictive setting, dignity and respect, privacy, response to complaints, retaliation, visitors, resident/family council, other rights and preferences.

**Financial, Property (Code E)** – Complaints involving facility staff mismanagement of residents' funds and property or billing problems.

**Care (Code F)** – Complaints involving facility staff failure to provide care including, poor quality, planning and delivery. Examples include but are not limited to accidents and falls, response to requests for assistance, care planning, medications, personal hygiene, access to health related services, symptoms unattended, incontinence care, assistive devices or equipment, rehabilitation services, physical restraint, chemical restraint, and infection control.

**Activities, Community Integration and Social Services (Code G)** – Complaints regarding activities, transportation, conflict resolution, and social services.

**Dietary (Code H)** – Complaints regarding food services, assistance, dining, hydration, and therapeutic or special diet.

## Complaint Category Definitions Continued ....

**Environment (Code I)** – Complaints involving the physical environment of the facility, including the resident’s space, building structure, accessibility, housekeeping, laundry, pest abatement, supplies, storage, and furnishings.

**Facility policies, procedures, and practices (Code J)** – Complaints involving acts of commission or omission by facility leadership/owners, administrative oversight, fiscal management, and staffing.

**Complaints about an outside agency (non-facility) (Code K)** – Complaints involving decisions, policies, actions or inactions by the regulatory system, Medicaid, managed care, veterans’ affairs, private insurance, and/or Medicare.

**Systems, others (non-facility) (Code L)** – Complaints involving resident representatives, family conflict, services from outside provider, or request to transition to a community setting.<sup>2</sup>



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<sup>2</sup> [https://ltcombudsman.org/uploads/files/support/NORS\\_Table\\_2\\_Complaint\\_Code\\_10-31-2024.pdf](https://ltcombudsman.org/uploads/files/support/NORS_Table_2_Complaint_Code_10-31-2024.pdf)

## Top Five Complaints

### As Reported to the South Dakota Long Term Care Ombudsman Program

#### Nursing Home

FFY 2022	FFY 2021	FFY 2020	FFY 2019
Care	Care	Care	Abuse, Gross Neglect, Exploitation
Abuse, Gross Neglect, Exploitation	Autonomy, Choice, Rights	Abuse, Gross Neglect, Exploitation	Care
Autonomy, Choice, Rights	Abuse, Gross Neglect, Exploitation	Autonomy, Choice, Rights	Admission, Transfer, Discharge, Eviction
Admission, Transfer, Discharge, Eviction	Admission, Transfer, Discharge, Eviction	Admission, Transfer, Discharge, Eviction	Autonomy, Choice, Rights
Financial, Property	Financial, Property	Financial, Property	Facility Policies, Procedures, and Practices

#### Board and Care Homes

FFY 2022	FFY 2021	FFY 2020	FFY 2019
Admission, Transfer, Discharge, Eviction	Autonomy, Choice, Rights	Autonomy, Choice, Rights	Care
Autonomy, Choice, Rights	Care	Admission, Transfer, Discharge, Eviction	Autonomy, Choice, Rights
Care	Abuse, Gross Neglect, Exploitation	Care	Abuse, Gross Neglect, Exploitation
Abuse, Gross Neglect, Exploitation	Admission, Transfer, Discharge, Eviction	Abuse, Gross Neglect, Exploitation	Admission, Transfer, Discharge, Eviction
Dietary	Dietary	Environment	Facility Policies, Procedures, and Practices

## When Should I Contact the Long Term Care Ombudsman Program?

- ❖ If a resident is being discharged from a facility against their wishes
- ❖ To report an issue or concern
- ❖ Ask for help addressing care concerns and/or systemic issues
- ❖ Get information when beginning to consider out of home placement
- ❖ When a loved one has dementia, and you are considering out of home placement options
- ❖ Other concerns regarding quality of care or quality of life in long term care settings





## Barriers, Efforts, and Recommendations

### ❖ Barrier:

Lack of understanding of the dementia disease diagnosis continues to be a barrier to residents receiving informed person-centered care.

### ❖ Efforts:

Increasing understanding of dementia and training:

- The South Dakota LTCOP was awarded a two- year grant totaling \$201,184 for dementia care education and culture change. The funding comes from the Civil Monetary Penalty (CMP) Fund, administered by the Department of Health. Thus far, through this funding, the LTCOP coordinated and sponsored training for 87 nursing facility staff members (completing 2-4 courses), in addition to over 200 long term care staff attended training on dementia care at the South Dakota Health Care Association (SDHCA) or South Dakota Association for Healthcare Organizations (SDAHO) conferences.
  - Quote from a nursing home staff member who attended Champion Courses at the SDHCA conference: “A couple of weeks after taking champion courses one and two at the SDHCA conference a nurse asked for help with a resident that was agitated and frustrated after supper. I went to talk to the resident and used an approach that was taught by Positive Approach to Care. I was able to figure out what the resident wanted and was able to get her to settle down for the night. Resident was resting comfortably, and the nurse was impressed by my approach.”
- All LTCO are Certified Dementia Practitioners through the National Council of Certified Dementia Practitioners and working on Consultation Certification through Positive Approach to Care (Teepa Snow). As new LTCO join the team, this certification will be completed.
- The South Dakota LTCO utilized Coronavirus Aid, Relief, and Economic Security Act (CARES) Act funds directed to the program through the Administration for Community Living to purchase dementia simulation kits to utilize when presenting information on resident rights to nursing facilities and assisted living communities. These simulation kits provide the opportunity for facility staff to experience life through the viewpoint of residents by utilizing tools, which simulate the various disabilities experienced by residents including, low vision, impaired hearing,



decreased mobility, dementia, and auditory hallucinations, etc. The State LTCO will provide ongoing use of the dementia simulation kits to help gain awareness of what a person living with dementia may experience.

- In February of 2021, the DHS designated a State Alzheimer's/Dementia Coordinator, which the LTCOP supported and continues to collaborate with surrounding Alzheimer's and dementia.

❖ Recommendations:

Continue the above efforts and look for additional ways to improve dementia care.

❖ Barrier:

Admission, Transfer, and Discharge continues to be in the top five complaints over the past several years. LTCOP may not be informed of all transfers or discharges but receiving the transfer/discharge notification is happening through multiple methods (email, fax, etc.), which leads to difficulties tracking and trending timely.

❖ Efforts:

The LTCOP has assisted residents and their families with concerns related to Admission, Transfer, and Discharge individually. The LTCOP continues to work with residents, families and facilities to prevent a transfer or discharge if at all possible; however, there is ongoing education and consultation to facilities about the admission, transfer, and discharge process.

❖ Recommendations:

The LTCOP will develop a standard form and a single point of entry for the information to assist residents and their families with concerns. Additionally, the trending information can help identify future efforts related to training, etc.

# Long Term Care Ombudsman Program Team

